



Community Development Department

DATE: April 5, 2022

FROM: Ben Ehreth, AICP, Community Development Director

ITEM: Easement Release in Lot 45 and Lot 46, Block 3, Whispering Bay

REQUEST

Brock and Shauna Norrie are requesting approval of the release of a 15-foot maintenance and access easement over Lot 45 and Lot 46, Block 3, Whispering Bay.

Please place this item on the April 12, 2022 City Commission meeting agenda.

BACKGROUND INFORMATION

The applicants intend to combine both lots into one parcel, and the easement currently runs directly between the two lots.

The easement was granted with the plat of Whispering Bay, which was recorded December 9, 2009. The easement proposed for release is one of many “maintenance and access” easements that are provided between every other lot to allow access to the bay. The Whispering Bay Homeowners Association is the entity responsible for maintenance of the bay, and a representative of this association has formally consented to this request.

The City of Bismarck does not utilize this easement and neither the city nor any utilities have facilities located in this easement.

RECOMMENDED CITY COMMISSION ACTION

Based on the above findings, staff recommends approval of the attached resolution to release a maintenance and utility easement over the South 7.5 feet of Lot 45 and the North 7.5 feet of Lot 46, Block 3, Whispering Bay

STAFF CONTACT INFORMATION

Ben Ehreth, AICP | Community Development Director, 355-1842 or behreth@bismarcknd.gov

Kim Lee, AICP | Planning Manager, 355-1846 or klee@bismarcknd.gov

Daniel Nairn, AICP | Senior Planner, 355-1854 or dnairn@bismarcknd.gov

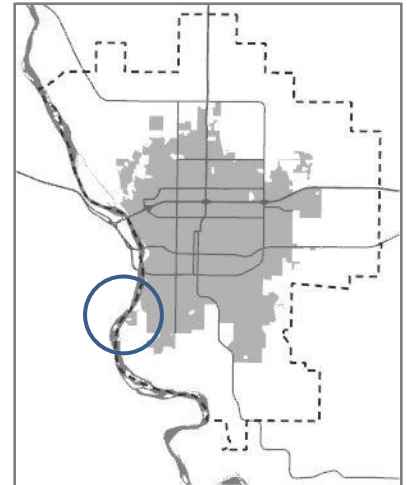
STAFF REPORT

Application for: **Plat Modification –
Easement Release**

Project ID: **PLMD2022-004**

Project Summary

<i>Title:</i>	Easement Release in Lot 45 and Lot 46, Block 3, Whispering Bay
<i>Status:</i>	Board of City Commissioners
<i>Owner(s):</i>	Brock and Shauna Norrie
<i>Project Contact:</i>	Landon Niemiller – Swenson, Hagen & Co.
<i>Location:</i>	In Southwest Bismarck, on the east side of Whispering Bay adjacent to Whisper Drive.
<i>Project Size:</i>	15-foot wide by 190 feet in length
<i>Request:</i>	Release maintenance and access easement to facilitate a lot combination



Staff Analysis

Brock and Shauna Norrie are requesting approval of the release of a 15-foot maintenance and access easement over Lot 45 and Lot 46, Block 3, Whispering Bay.

The applicants intend to combine both lots into one parcel, and the easement currently runs directly between the two lots.

The easement was granted with the plat of Whispering Bay, which was recorded December 9, 2009. The easement proposed for release is one of many “maintenance and access” easements that are provided between every other lot to allow access to the bay. The Whispering Bay Homeowners Association is the entity responsible for maintenance of the bay, and a representative of this association has formally consented to this request.

The City of Bismarck does not utilize this easement and neither the city nor any utilities have facilities located in this easement.

This maintenance and access easement release request requires a public hearing, and two notifications were mailed to owners of adjacent properties on April 1, 2022.

This request does not affect the 15-foot utility easement of the west side of said lots adjacent to Whisper Drive.

Required Findings of Fact (relating to land use)

1. The easement, or part thereof, shown on the plat of record and proposed for release is no longer needed for the purpose for which it was dedicated;
2. The release of the easement is consistent with the general intent and purpose of the zoning ordinance; and
3. The release of the easement is consistent with the master plan, other adopted plans, policies and accepted planning practice.

(continued)

Staff Recommendation

Based on the above findings, staff recommends approval of the attached resolution to release a maintenance and utility easement over the South 7.5 feet of Lot 45 and the North 7.5 feet of Lot 46, Block 3, Whispering Bay

Attachments

1. Location Map
2. Plat Map
3. Resolution
4. Application/Petition

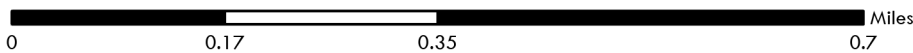
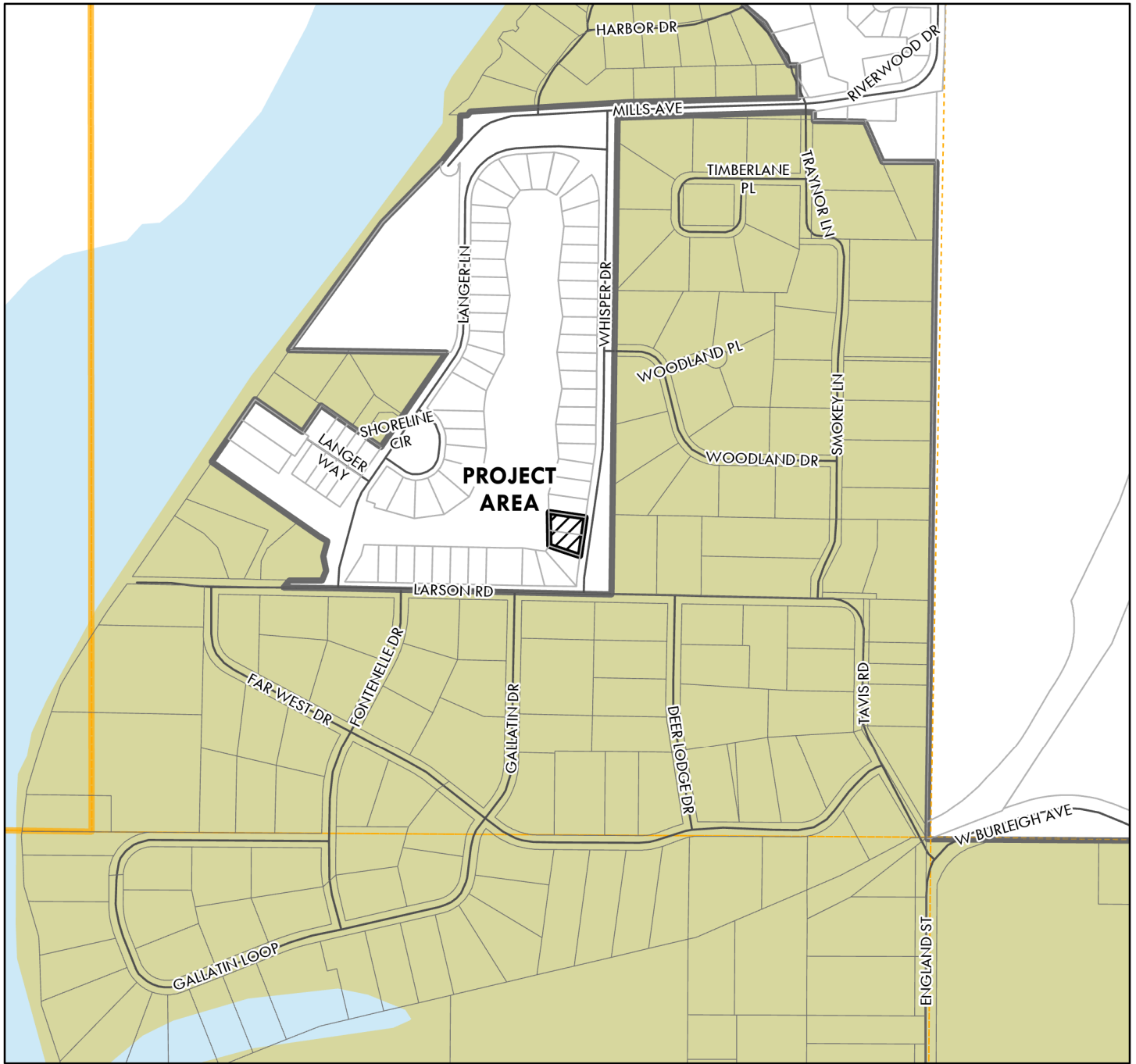
Staff report prepared by: Daniel Nairn, AICP, Senior Planner
701-355-1854 | dnairn@bismarcknd.gov



Location Map

WHISPERING BAY, L45-46, B3

PLMD2022-004



City Limits

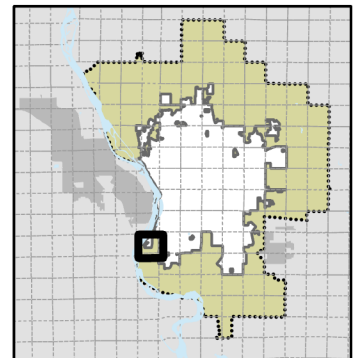


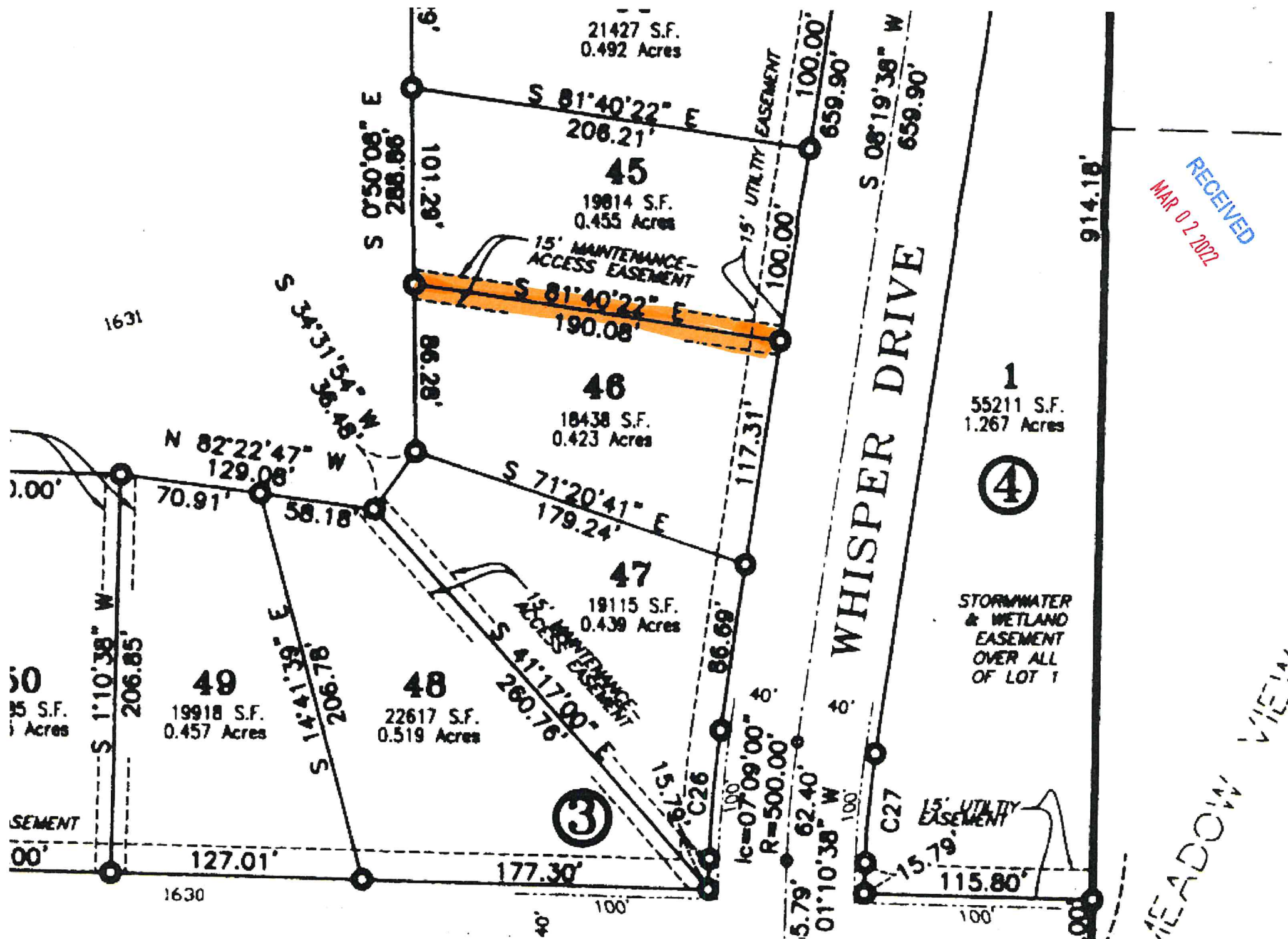
Bismarck ETA Jurisdiction

City of Bismarck
Community Development Department
Planning Division
March 4, 2022 (HLB)

*Section, township, and
range indicated in orange*

*This map is for representational use only and does not represent a survey.
No liability is assumed as to the accuracy of the data delineated hereon.*





RESOLUTION

RELEASE OF MAINTENANCE AND ACCESS EASEMENT IN WHISPERING BAY

WHEREAS, the owners of property described as Lots 45 and 46, Block 3, Whispering Bay, adjoining and contiguous to a platted maintenance and access easement, have heretofore joined in petition requesting that said maintenance and access easement be released, verified by oath of at least one petitioner and accompanied by a plat of said maintenance and access easement to be released, having set forth the facts and reason for said release; and

WHEREAS, said platted maintenance and access easement was shown on the plat of Whispering Bay, which was recorded on December 9, 2009; and

WHEREAS, the City Engineer has determined that the maintenance and access easement proposed for release is no longer necessary to provide maintenance and access services to the area.

NOW, THEREFORE, BE IT RESOLVED by the Board of City Commissioners of the City of Bismarck, North Dakota, that the petition to release maintenance and access easement described as:

The South 7.5 feet of Lot 45 and the North 7.5 feet of Lot 46, Block 3, Whispering Bay in the City of Bismarck, Burleigh County, North Dakota

is in all things allowed and granted.

BE IT FURTHER RESOLVED that the City Administrator be and is hereby authorized to file this resolution for record in the office of the County Recorder, Burleigh County, North Dakota.

Adopted this 12th day of April, 2022.

CERTIFICATE

I, Jason Tomanek, do hereby certify that I am the duly appointed, qualified Assistant City Administrator of the City of Bismarck, North Dakota, and that the foregoing is a full, true and correct copy of a resolution adopted at a legally convened meeting of the Board of City Commissioners held on April 12, 2022.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Bismarck, North Dakota, this 12th day of April, 2022.

(SEAL)

Jason Tomanek
Assistant City Administrator
Bismarck, North Dakota



City of Bismarck
Community Development Department
Planning Division
Phone: 701-355-1840 • FAX: 701-222-6450 • TDD: 711
PO Box 5503 • Bismarck, ND 58506-5503
planning@bismarcknd.gov

Last Revised: 1/1/2022

UNIFIED DEVELOPMENT APPLICATION

RECEIVED
MAR 02 2022

NOTE: APPLICATIONS ARE NOT COMPLETE UNTIL ALL REQUIRED SUBMITTALS HAVE BEEN RECEIVED

Application submitted for (check all that apply):

- | | | | |
|---|---|--|--|
| <input type="checkbox"/> Preliminary Major Plat | <input type="checkbox"/> Final Major Plat | <input type="checkbox"/> Minor Plat | <input type="checkbox"/> Plat Vacation |
| <input type="checkbox"/> Annexation | <input type="checkbox"/> Zoning Change | <input type="checkbox"/> PUD Zoning Change / PUD Amendment | |
| <input type="checkbox"/> Special Use Permit | <input type="checkbox"/> Variance | <input type="checkbox"/> Rural Lot Split (RR & RR5) | |
| <input type="checkbox"/> Fringe Area Road Master Plan Amendment | | <input type="checkbox"/> Land Use Plan Amendment | |

Lot Modification

- ☐ Lot Line Adjustment
☐ Lot Split
☒ Lot Combination

Plat Modification

- ☐ Street/Alley Vacation
☒ Easement Release
☐ Non-Access Line Release

PROPERTY INFORMATION

Project Name:	Whispering Bay Easement Release		
Legal description: (Lot, Block, Addition/Subdivision)	Lots 45 & 46 Block 3 Whispering Bay		
Street address of property:	2924 & 3000 Whisper Dr		
Existing Zoning	R5	Proposed Zoning:	
Acreage:		Number of Lots:	2
Description of development proposal, including reason(s) for the request: (if additional room is needed, please attach a separate sheet)	Release the 15' Maintenance & access easement common to Lots 45 & 46 Block 3 Whipsering Bay. HOA has agreed to release. Combine Lots 45 & 46 Block 3 into single parcel.		

APPLICANT/DEVELOPER

Name:	Brock & Shauna Norrie
Mailing Address:	5709 Crested Butte Rd., Bismarck, ND 58503

EASEMENT OWNER

Name:	Whispering Bay HOA
Mailing Address:	3420 Gallatin Dr, Bismarck, ND 58504

CONTACT PERSON/CONSULTANT (IF DIFFERENT THAN APPLICANT/DEVELOPER)

Name:	Iniemiller@swensonhagen.com
Mailing Address:	909 Basin Ave., Bismarck, ND 58504

This application is filed complete with the required information as outlined in the attached submission checklist. If a subdivision plat application: because of scheduling and calendar considerations, your subdivision plat may not be finally approved within 30 days as per NDCC Section 40-48-21. I hereby waive said requirements in return for expeditious consideration of my application by the City. If an annexation application: the City will post legal notice of public hearing on behalf of the applicant rather than the applicant as specified in NDCC Section 40-51.2-05. I understand the regulations of the Bismarck Zoning Ordinance and the NDCC as they pertain to this request(s). I certify that all property owners have signed or ratified this application. I hereby request favorable consideration of the above described development application.

Shauna (Applicant's Signature) Shauna Norrie (Printed Name) 3/1/22 (Date)

____ (Owner's Signature, if different) ____ (Printed Name) ____ (Date)

____ (Additional Owner's Signature, if applicable) ____ (Printed Name) ____ (Date)

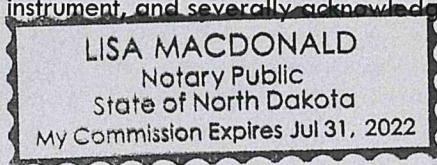
____ (Additional Owner's Signature, if applicable) ____ (Printed Name) ____ (Date)

VERIFICATION FOR PLAT MODIFICATION REQUESTS:

The oath of at least one petitioner is required for plat modification requests only
(vacation of street/alley, release of non-access line, or release of easement)

STATE OF NORTH DAKOTA)
 : SS
COUNTY OF BURLEIGH)

On this 1st day of March, 2022, before me, a notary public in and for said county and state, appeared Shauna Norrie, known to be personally to be the same person described in and whom executed the above instrument, and severally acknowledged that he/she executed the same.



Lisa Macdonald
Notary Public
Burleigh County, State of North Dakota


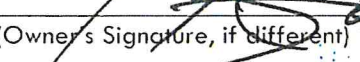
Submission Deadlines:

The Planning and Zoning Commission regularly meets on the fourth Wednesday of each month. All development applications – except for variances, lot modifications and plat modifications – are due at **12:00 noon on the Friday that is 33 calendar days prior** to the meeting.

The Board of Adjustment regularly meets on the first Thursday of each month. All development applications for variances are due at **5:00 p.m. on the Monday that is 24 calendar days prior** to the meeting.

The Board of City Commissioners regularly meets on the second and fourth Tuesdays of each month. All development applications for plat modifications (street/alley vacation, non-access line release, easement release) are due at **5:00 p.m. on the Tuesday that is 14 calendar days prior** to the meeting.

Development applications for lot modifications are processed administratively and may be submitted at any time.

(Applicant's Signature)	(Printed Name)	(Date)
	Arin Boudreau	3/1/22
(Owner's Signature, if different)	(Printed Name)	(Date)
	Whitney Dey-Hart	
(Additional Owner's Signature, if applicable)	(Printed Name)	(Date)
(Additional Owner's Signature, if applicable)	(Printed Name)	(Date)